



January 28, 2011

Via email: privacynoi2010@ntia.doc.gov

U.S. Department of Commerce
1401 Constitution Avenue, NW, Room 4725
Washington, DC 20230

Re: Comments on Commercial Data Privacy and Innovation in
the Internet Economy: A Dynamic Policy Framework

Dear Sirs or Mesdames:

The American Catalog Mailers Association (ACMA) is a trade association and advocacy group for catalog companies and their key suppliers that use the mail to solicit orders or to gather new customers. We find the Department of Commerce's Internet Policy Task Force green paper on Commercial Data Privacy relevant, timely and necessary. ACMA respectfully submits these brief comments in response to the Department of Commerce's request for input.

While catalogers, by definition, use offline communications with customers and prospects, virtually every catalog company also has strong e-commerce deployment capabilities. On average, the Internet is now responsible for collecting about half of inbound orders received by catalog companies. Maintaining an online environment where Americans feel free to participate without compromising their safety is clearly important to this industry segment. Thus, catalogers are deeply committed to protecting consumer trust and safeguarding consumer privacy in the on-line environment.

We also realize that the report focuses primarily on Internet-based consumer privacy. ACMA's primary concern is that any ultimate regulations could include ways to legislate the kind of offline consumer data processes that catalog companies have responsibly practiced for many years.

We appreciate the opportunity to provide comment. Throughout, ACMA responds only to selected and relevant questions on the issues specific to catalogs as we realize others will be commenting on the broader subjects generally common to all marketers.

Introduction

In 2006, there were more than 15,000 different companies engaged in catalog marketing in American. The catalog sector did more than \$270 billion in commerce. The industry employs millions of Americans and has historically been a significant source of entrepreneurial business formation and wealth creation. As documented elsewhere by ACMA, catalog marketing creates a wide variety of social and cultural benefits for Americans.¹ Catalogers are generally regarded as a trusted source of information and products to the American consumer, a responsibility they take seriously and guard appropriately.

Retail companies that sell products through printed catalogs have a long history of both processing consumer data and respecting their customers' privacy. Our member companies as well as other catalog mailers have always taken great care with the information about their customers and prospects. They are among the best American corporate citizens when it comes to respecting consumers' wishes, ways customers desire to be marketed to, and other choices their customers request. This is because collective experience has shown time and again the broad common interests between catalog marketers and their customers. Catalog companies know that it is counter-productive to send catalogs more often than their customers desire to receive them, or to send promotions for products and services in which their customers have little interest. Moreover, the distance between the customer and the catalog company required developing an enhanced bond of trust so that consumers would lose their natural hesitation to do business with faraway sellers to whom they would send their money without the comfort of walking out of a store with goods in hand. When it comes to contact with customers and prospects, our members use the data they gain carefully, respectfully, and tactfully simply because, apart from being the right thing to do, it makes good business sense.

As the primary advocate for its members, ACMA endorses the use of two important self-regulation tools, Catalog Choice and DMAchoice. Both of these mechanisms allow consumers to opt out of catalog mail they do not wish to receive. As explained above, no catalog company wants to bear the cost of sending an unwanted catalog to recipients who have clearly indicated they do not wish to receive it. This only adds additional costs to catalog operations and risks customer ill will.

We also encourage every cataloger to provide an opt-out link off its main landing page on its Web site to spell out clear directions on how customers can be removed from their mailing lists. Privacy, choice, and customer preferences are regularly discussed at industry gatherings; companies routinely share best practices at meetings and events. Virtually every catalog marketer maintains its own

¹ See "The American Catalog Experience: *Catalog Marketing's Social Importance to American Consumers & Culture*," first published in 2010 and available at <http://bit.ly/aCVXpE>

suppression file and applies it to all customer and prospect mailings. In fact, the application of suppression files across mailing lists could be considered standard operating procedure across the industry.

Catalogers define it as being in their self-interest to respect consumer privacy issues. Catalog companies judiciously guard their lists and the data they accumulate on customers and prospects as it is a fundamental company asset. Lists and data are the lifeblood of any cataloger's existence. Access to such information is restricted, logged, and closely guarded at every company with which we are acquainted. Consumer names, addresses, and purchasing history are protected against unauthorized access or use. Transfer of this information to any third party, particularly a competitor, would be a source of significant commercial harm. Internal controls, policy, and security procedures are specifically constructed to mitigate the risk that personally identifiable customer information can be accessed or copied by unauthorized parties both within and outside a catalog company.

We feel it is important to make sure that catalog companies do not get swept into unnecessary or potentially destructive rules and regulations. Our position is that the catalog industry does not need more regulation to protect privacy. We know of no widespread privacy lapses nor are companies in catalog marketing likely to change their vigilance given their clear self-interest involved in protecting consumer privacy.

It is for these reasons that, up until now, the consumer privacy debate has not been an area of top concern to our members and regulation has focused on certain limited online business categories. Despite catalog marketing's existence and operation for nearly two hundred years, privacy abuse has rarely been an issue for consumers when it comes to offline, catalog communications. We certainly value the Department of Commerce report as a best practices tool going forward, however, and offer our comments to questions raised in the report that are applicable to the catalog industry.

Current Catalog Collection and Exchange Practices Already Protect Privacy

Catalog marketers are more than two generations ahead of internet retailers in incorporating substantive privacy protections into their practices when it comes to data security, data collection limits, sound retention practices and data accuracy. Maintaining comprehensive data management procedures throughout the life cycle of their products and services is something catalogers have routinely done since the mid-20th Century, long before the widespread use of computers.

Some take the position that all data collected should be kept private unless the consumer specifically tells the business otherwise. We interpret this to mean that all

consumers, their names, and all aspects of their personal information cannot be exchanged unless they explicitly agree to allow for their data to be rented or exchanged among companies. The exception to this practice would be primarily basic name and address data collected by retailers so they can ship goods to their customers' homes. Beyond the collection of such basic data, some would have consumers consulted before any more in-depth data about them is exchanged. This approach is unworkable for catalogers; it would effectively hobble catalog marketing.

Catalog marketers have historically practiced sound data retention and mailing list exchange policies. They have been in compliance with proper consumer data usage. For example, they don't seek consumers' social security numbers, length of residence, personal income and other intimate details.

Instead, catalog marketers have responsibly processed data on customer purchases, the frequency with which they have made such purchases, and the approximate amount of money they have spent on these purchases. Known as the recency/frequency/monetary (RFM) model, this gives them the ability to make offers that individual consumers would like.²

What's more, catalogers rely heavily on their ability to share such vital yet non-invasive and certainly non-"linkable" data on consumers. Their ability to become more competitive, to grow their customer files and grow their businesses relies heavily on their ability to exchange ("rent") the names, addresses and RFM data on their customers with other responsible catalog marketers.

Much of Cataloger Data Collection is Public or Self-Evident to Consumer

To state the obvious, consumer name, address, and telephone information is currently available on a wide range of online databases and other public record sources. This was true well before the emergence of the Internet. Phone books, city directories, real estate and tax records, and other hardcopy compilations routinely carried this information *unless* consumers specifically took action to have their information "unlisted." ACMA maintains that the widespread availability of this information effectively means it is, by definition, *not* confidential.

Beyond basic name and address information, other than a history of past communications, catalogers generally retain only information on customer purchases. This includes how much is spent, when customers made purchases, and the frequency of their activity. To grant consumers complete access to their

² "Recency, Frequency and Monetary (RFM) Analysis," a report by the Kenan-Flagler Business School, University of North Carolina available at http://cmason.myweb.uga.edu/Course_Roadmap/RFM_Analysis/Note_-_RFM_Analysis.pdf

data would not only have a real cost, but given the immense variety of systems, it would also be impractical and unnecessary. Cataloging has been around for long enough that most consumers understand what is collected about them when they choose to patronize catalog companies. Some catalogers actually have individualized accounts for their best customers that allow them to sign on and review purchase history. Many companies use email summaries of orders that are sent as acknowledgements via email. FTC-required notices to customers when rapid shipment is not possible have been longstanding requirements that further reinforce to customers that a catalog company is aware and tracking their purchase history. Therefore, it is unnecessary, and actually harmful, to change the current opt-out protocol to one requiring advance opt-in.

To shift to a privacy model in which all consumers would have to be consulted prior to having such basic data about them exchanged would effectively end catalog marketing as we know it. It is neither practical to seek opt-in permission in advance of a marketing communications nor is the consumer inconvenienced greatly by receiving additional communications from marketers.

We also feel that prescribing a reasonable retention period would be both unnecessary and unwarranted for catalogers. For the same reasons given above, catalogers handle consumer data responsibly enough that it's irrelevant how long they retain such data. This is true for both customers and prospects as a catalog company wants to maintain a record of mailing prospective customers so as to determine when it is no longer justified to continue to send catalogs. Therefore, we see no need to prescribe a reasonable retention period.

Further, coming up with such a limit would be very difficult for responsible catalog marketers to do because different organizations depend on the data in different way. They often find new ways to use the data for the benefit of both the consumer and the company.

Likewise, when it comes to modifying or limiting common offline data exchange practices, such as modifying the data maintained in legacy data systems to protect consumer privacy interests, we feel such changes are completely unwarranted when it comes to the upkeep of offline, catalog purchasing behavior.

A final point is in order. Part of the issue in the privacy debate is how invasive information is stored. Another element, however, is who can access it and to what end? Can it be used to learn specific facts about a particular individual that can do harm? From a practical standpoint in cataloging, considering the behavior of a single customer, even a very good one, is *not* possible. The economics of cataloging make this impossible. Even a small catalog company manages tens of thousands of names on its various lists. Medium- and larger-sized companies routinely manage millions of name / address pairs. The sheer volume makes

inspection or tracking of an individual's personally identifiable information (PII) unrealistic. Data use, including sorts and manipulations, are done *en masse* using the entire database while operators look at "selects" or extracts of this data in groupings that include many consumer names / addresses where each is an aggregative roll-up of many consumers. Larger trends in the data are of interest; individual consumer behavior is not.

It is critical that any industry codes or regulations clearly distinguish between aggregated data that is not individually identifiable and information that reflects private data about a specific person. It is in the latter case that privacy interests are at stake. In contrast, aggregated data is used on a predictive basis to help craft product offerings in the hopes of presenting products and services that customers and prospects might like to hear about. The use of aggregated data is purely positive. It makes sure that consumers are offered things that they may have a genuine desire to buy, and avoids in-boxes – physical or electronic – from being clogged with promotions that do not match consumer interests.

Transparency, Informed Consent and Consumer Choice

Catalog mailers have historically followed practices that should be considered common and acceptable to consumers. Chief among these is mailing catalogs or other direct marketing offers to catalog buyers after they make a purchase. Further, catalogers commonly exchange names of known buyers who shop by catalog frequently. This allows consumers to be exposed to new categories goods and services. The catalog industry is based on this longstanding practice. It's a formula that has worked for decades -- in fact centuries -- while not resulting in significant numbers of consumer complaints.

Most catalogers provide an easy way to request not having their purchasing data exchanged among companies. However, the acceptable default should be to maintain the address, transactions, and the ability to mail them; to rent or exchange names, addresses, and transaction summaries (RFM) with other reliable merchants. There already exists a "self-editing" element to this as no marketer wants to make its core asset available to a company that is not considered trustworthy and reputable, nor does it want to see an offer or promotion sent that is completely irrelevant to the customer group.

Not only is the ability to mail to prospective customers freely is critical to the functioning of the catalog industry, but the U.S. Postal Service heavily depends on catalog mail volume as well.³ The USPS, which reports that catalogs represent

³ "The Postal Service is the linchpin of a \$1 trillion mailing industry that employs approximately 7.5 million Americans in fields as diverse as direct mail, printing, catalog production, paper

12% of all mail volume, aggressively markets its services to catalog mailers.⁴

As for setting limits to the context in which the data is collected from consumers by first-party marketers, this is not a feasible option in the climate of contemporary, 21st Century multichannel marketing. While consumers should certainly be able to control or request the channels to which they are marketed, first-party marketers should not have to be restricted to the initial contact. There are no consumer benefits here, only enterprise costs.

To the issue of whether marketing to consumers by commonly-branded offline affiliates is to be considered first-party marketing, ACMA feels strongly that this is most certainly first-party marketing. To consider it otherwise would place a huge burden on entities that have intentionally grown to take advantage of such synergies.

Catalog companies routinely provide methods for consumers to reduce or eliminate certain types of communications, including removal of their names from mailing lists. Catalogers also typically use suppression lists from third parties as discussed above. The clearly- and easily-used options catalogers offer to the consumer, as well as outside third-party services such as DMAchoice and Catalog Choice, give consumers the control they need.

Offline catalogers also belong in an entirely different context from online marketers with regard to the method of consent. There are considerable cost and other operational differences between mail-borne, phone-based and internet-based transactions, for instance. It is not practical to solicit and receive advance consent from every prospective customer prior to sending them information that they have come to expect as a matter of routine.

In offline marketing communications, such as with printed catalogs mailed to consumers, catalog marketers' privacy notices, by and large, are quite clear. Consumers usually have an easy time finding these notices so they can "opt out" of catalog mailing lists. What's more, catalog mailers give consumers more than sufficient options to keep their names and other data from being exchanged with other marketers. As a result, we feel there's no need for broad-scale standardization of such notices when it comes to print catalogs.

While there have been consumers over the years who have inquired about the level of data that catalog companies keep on them, this is in no way as significant an issue as it is in the online world. Given their sensitivity to their customers, should

manufacturing, and financial services." Press Release issued by Senator Susan Collins, Sept. 30, 2010

⁴ "Catalog visibility is at an all-time high" – Tom Foti, manager, marketing mail
<http://multichannelmerchant.com/catalog/0422-catalog-visibility-usps/>

technological innovations expose a gap between customer expectations and operational or marketplace realities, we would expect catalog companies to quickly adjust their policies and practices to maintain goodwill and consumer trust.

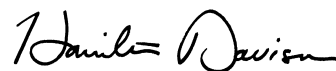
Conclusion

There's no question that from time to time, consumers receive prospecting catalogs and wonder, "how'd they get my name and address?" But the exchange of mailing lists between catalog companies is the lifeblood of this industry. Exchanging and renting consumers' basic information so potential customers can be mailed catalogs has for years been a harmless exercise when it comes to protecting consumers' privacy. Complaints have been minimal. When they have occurred, they are addressed quickly.

The fundamental issue is protecting consumers' privacy and acknowledging their reasonable privacy expectations. At least in the case of cataloging, our belief is that consumers' rights, needs, and trust are being adequately maintained without any need for further actions on the part of government.

ACMA strongly urges that if the thrust of the current debate on privacy leads to tighter standards or potential legislation focused on "do not track," that such standards or bills not include any controls over offline, catalog data exchange. These controls would not only provide further consumer protections, but they would also have the potential to do great harm to the thousands of companies and millions of employees who rely on an adequately self-regulated marketplace today.

Sincerely,
American Catalog Mailers Association, Inc.

A handwritten signature in dark ink, appearing to read "Hamilton Davison". The signature is fluid and cursive, with the first name "Hamilton" and last name "Davison" clearly distinguishable.

Hamilton Davison
President and Executive Director